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IN THE COURT OF APPEALS OF INDIANA

RAYMOND EAST,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 46A03-0802-PC-34
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAPORTE CIRCUIT COURT
The Honorable Thomas J. Alevizos, Judge
Cause No. 46C01-0610-FB-591

May 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Raymond East challenges his fifteen-year sentence for class B felony dealing in cocaine. We affirm.

On August 28, 2006, with the help of a confidential informant, LaPorte Metro Operations Detective Dean Schultz conducted a controlled purchase of cocaine from East. Other officers conducted similar controlled purchases from East on August 31, 2006, and September 5, 2006. On October 27, 2006, the State charged East with three counts of class B felony dealing in cocaine. Following the trial court's rejection of an initial plea agreement, East entered into a second plea agreement on October 19, 2007. Pursuant to its terms, East pled guilty to one count of dealing in cocaine, the remaining two counts were dismissed, and sentencing was left open to the trial court.

The trial court conducted a sentencing hearing on December 21, 2007, and imposed a fifteen-year sentence, with twelve years executed and three years suspended to probation. At sentencing, the trial court found the following aggravating circumstances: East's extensive criminal history, his history of violating probation and parole, and his need for correctional or rehabilitative services. Tr. at 21-22. The trial court specifically referenced East's guilty plea, but found that it did not constitute a significant mitigating circumstance because of the substantial benefit East received by entering into the plea agreement. *Id*. at 22.

On appeal, East challenges both the treatment of his guilty plea and the appropriateness of his sentence. Sentencing decisions are within the trial court's discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. "So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion." *Id*. An abuse of discretion occurs if the decision is "clearly against the logic

and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id*. (citations and quotation marks omitted).

Specifically, East argues that the trial court should have assigned greater mitigating weight to his guilty plea. Because a trial court no longer has any obligation to weigh aggravating circumstances against mitigating circumstances when imposing a sentence, "a trial court can not now be said to have abused its discretion in failing to 'properly weigh' such factors." *Id*. at 491.

Moreover, "a guilty plea does not automatically amount to a significant mitigating factor." *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied* (2006). For example, a guilty plea is not a significant mitigator where the evidence against the defendant is such that the decision to plead guilty is merely pragmatic. *Id*. East sold cocaine to three officers on three separate occasions. Once charged, he pragmatically pled guilty to one count of class B felony cocaine dealing, and the State dismissed the remaining two counts and did not seek habitual offender penalties for which he was eligible. Appellant's App. at 19, 21-22. East contests the pragmatism behind his plea, arguing that the evidence might not have been sufficient to convict him on the two dismissed counts. We find this argument speculative at best. In sum, we find no abuse of discretion here.

We now address the appropriateness of East's sentence pursuant to Indiana Appellate Rule 7(B), which provides, "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." A defendant bears the burden of persuading the appellate court that his sentence has met the

inappropriateness standard of review. *Anglemyer*, 868 N.E.2d at 493. In making merely a passing reference to inappropriateness, East has not met this burden. Nonetheless, we briefly address the nature of the offense and the character of the offender.

"[R]egarding the nature of the offense, the advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Id*. at 494. The advisory sentence for a class B felony is ten years, with a statutory range of six to twenty years. East contends, and the State admits, that this case involves a rather run-of-the-mill drug deal.

That said, it is East's character that provides ample support for the sentence imposed by the trial court. His extensive criminal history spans a period of almost thirty years and includes five prior felony convictions and nearly a dozen misdemeanor convictions. He has a history of substance abuse, burglary, theft, battery, and probation violations. He was on parole when he committed the instant offense, and incarceration and its alternatives have proven ineffective deterrents to his continued criminal activity. His sentence is appropriate.

Finally, East argues that his sentence should be vacated based on an alleged trial court misstatement regarding sentence modification. The trial court's sentencing order contains the following statement:

> The Defendant shall have the right to petition the Court for a modification of sentence in the Defendant's *last year* of executed sentence if the Defendant has successfully completed a drug counseling program. *The State of Indiana reserves the right to object* to a hearing on any such modification petition.

Appellant's App. at 65 (emphases added). Indiana Code Section 35-38-1-17(a) provides that within 365 days after a defendant begins serving his sentence, the trial court may, after

providing notice to the prosecutor and obtaining a report from the Department of Correction regarding the defendant's conduct in prison, reduce or suspend the sentence. Subsection (b) provides that, if more than 365 days have elapsed, the court's authority to enter such a reduction or suspension is "subject to the approval of the prosecuting attorney." Ind. Code § 35-38-1-17(b).

East cites *State v. Fulkrod*, 753 N.E.2d 630, 633 (Ind. 2001), to support his argument that the trial court's statement was an attempt to circumvent the statute by illegally reserving the right to modify the sentence at some point in the future and thereby raising "false hope" on his part. In *Fulkrod*, the State appealed the trial court's modification of the defendant's sentence after the expiration of the 365-day period over the objection of the prosecutor. Our supreme court reversed and reinstated the defendant's original sentence, holding that the trial court had exceeded its authority.

Fulkrod is distinguishable because it involved an actual modification made without prosecutorial approval after the time limit had expired. Here, East seeks to strike his unmodified sentence as an invalid, illusory promise. He bases his assertion on an assumption that, in referencing the "last year" of the sentence, the trial court must have been unaware that it lacked authority to modify a sentence without prosecutorial approval after 365 days have elapsed and that, had the court been aware of the time limit, it would have imposed a lighter sentence in the first place. However, the trial court also specifically referenced the State's right to object to such a motion to modify. Appellant's App. at 65. When read together, the trial court's statements reflect an accurate reading of Indiana Code Section 35-38-1-17(b). We find no error here.

Affirmed.

BARNES, J., and BRADFORD, J., concur.